Supreme Court, U.S.
FILED
AUG 6 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

No. 75-208
October Term, 1974

ELIJAH W. RATCLIFF,
Movant

vs.

STATE OF TEXAS; WILLIAM J. ESTELLE, JR., Director, Texas Department of Corrections; and DON H. COSTILOW, Warden, Coffield Unit, Texas Department of Corrections,
Respondents

[redacted] MOTION FOR LEAVE TO FILE PETITION FOR ~~EXTRAORDINARY WRIT~~ OF CERTIORARI

ELIJAH W. RATCLIFF
Petitioner, Pro Se
Coffield Unit J-420
Tennessee Colony
Texas 75861

TABLE OF CONTENTS

	PAGE
Motion for Leave To Appear	1
Motion for Extension of Time To File Jurisdictional Statement or Petition for Extraordinary Writ of Certiorari	2
Petition for Extraordinary Writ of Certiorari	6
Opinions Below	7
Jurisdiction	8
Questions Presented	11
Constitutional Provisions Involved	12
Statement of Case	13
Grounds Substantiating Federal Questions	17
Conclusion	24
Appendix A	26
Appendix B	42
Appendix C	50

TABLE OF CITATIONS

CASES:

Alcoa Steamship Co. v. Perez, 428 F. 2d 438 (1970)	22
American Federation of Labor v. American Sash and Door Co., 335 U.S. 538 (1949)	16
Atkins v. Texas, 325 U.S. 398 (1945)	18
Baggett v. Bullitt, 377 U.S. 360 (1964)	20
Beard v. State, 287 S.W. 2d 667 (1956)	10, 15, 20
Bledsoe v. Yarborough, 412 S.W. 2d 222 (1967)	19

Bouie v. City of Columbia, 378 U.S. 347 (1964) . 15, 18, 20
Brown v. Board of Education of Topeka, Kansas, 347 U.S. 483 (1954) 21
Bruce v. Beto, 3[illegible] F. 2d 212 (1968) 23
Cobb v. Brakcom, 339 F. 2d 95 (1964) 14
Dearman v. Woodson, 429 F. 2d 1288 (1970) ... 24
Downer v. Dunaway, 53 F. 2d 586 (1931) 23
Faubus v. United States, 358 U.S. 829 (1958) ... 5
Fiduti v. Rosenberg, 374 U.S. 449 (1963) 20
Gajewski v. United States, 375 U.S. 968 (1963) . 14
Giacona v. United States, 358 U.S. 873 (1958) .. 10
Hamilton v. Newburg, 412 S.W. 2d 801 (1967) .. 19
Hart v. West, 335 F. 2d 481 (1964) 9
Hesbrook v. State, 194 S.W. 2d 260 (1946) 10, 15, 17, 20
Hill v. Texas, 316 U.S. 400 (1944) 18
Holt v. Sarver, 442 F. 2d 304 (1971) 23
Jackson v. United States, 392 U.S. 932 (1968) .. 15
Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) 23
Meyer v. Klinger, 364 F. 2d 823 (1966) 22
Norris v. Alabama, 294 U.S. 587 (1935) ..8, 14, 18, 22
Palko v. Connecticut, 302 U.S. 319 (1937) 10
Parker v. Gladden, 385 U.S. 363 (1966) 3
Price v. Johnston, 334 U.S. 266 (1968) 9, 23
Ralph v. Warden, Maryland Penitentiary, 438 F. 2d 786 (1971) 24
Ratcliff v. Texas, 504 S.W. 2d 883 (1974) 7, 14, 16
Street v. New York, 394 U.S. 576 (1969) 4
United States v. Liguori, 438 F. 2d 663 (1971) .. 16
United States v. Shackney, 333 F. 2d 475 (1964) . 23
United States ex rel. Priest v. Department of Corrections of State of Delaware ex rel. Nandini, 390 F. 2d 150 (1968) 22

CONSTITUTIONAL PROVISIONS:

United States Code, Const. Art. 3, Sec. 2, C1.1 ..8, 9, 12
United States Code, Const. Amend. V 3, 4, 8, 10, 11, 12, 16, 18, 21, 22
United States Code, Const. Amend. VIII 3, 4, 5, 8, 11, 12, 16, 20, 22, 24
United States Code, Const. Amend. XIII 3, 4, 5, 8, 11, 12, 20, 22, 23
United States Code, Const. Amend. XIV 3, 4, 8, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22
United States Code Const. Amend. XV 3, 4, 8, 11, 12, 18, 22

STATUTORY PROVISIONS—FEDERAL:

Title 28, United States Code, Sec. 1257(2) 3, 8, 9
Title 28, United States Code, Sec. 1257(3) 3, 8
Title 28, United States Code, Sec. 1343 17
Title 28, United States Code, Sec. 1443 ...17, 20, 21, 24
Title 28, United States Code, Sec. 1447(d) 8, 17, 20, 21, 24
Title 28, United States Code, Sec. 1651 ...3, 5, 8, 9, 24
Title 28, United States Code, Sec. 1652 .....15, 24
Title 28, United States Code, Sec. 2104 22
Title 28, United States Code, Sec. 2241 ..... 5, 24
Title 28, United States Code, Sec. 2242 24
Title 28, United States Code, Sec. 2243 24
Title 28, United States Code, Sec. 2403 24
Title 42, United States Code, Sec. 1981 ..... 3, 4, 10, 16, 17, 18, 19, 20, 21, 22, 24
Title 42, United States Code, Sec. 1982 ..... 3, 4, 10, 16, 17, 18, 20
Title 42, United States Code, Sec. 1983 ..... 3, 4, 10, 16, 17, 18, 20
Title 42, United States Code, Sec. 1984 ...4, 10, 16, 23
Title 42, United States Code, Sec. 1988 .....10, 16

Title 42, United States Code, Sec. 1994 .....10, 16
Federal Rules Civ. Proc., Rule 33, 28 U.S.C. 14
Rule 10, Rules of the Supreme Court of the United States 9
Rule 11, Rules of the Supreme Court of the United States 24
Rule 23, Rules of the Supreme Court of the United States 24
Rule 52, Rules of the Supreme Court of the United States 24

STATUTORY PROVISIONS—STATE:

Vernon's Ann. P. C., Art. 1410 .....9, 14, 15, 17
Vernon's Ann. P. C., Art. 1413 .....9, 14, 15, 17
Vernon's Ann. C. C. P., Art. 5.01 .....16, 17
Vernon's Ann. C. C. P., Art. 30.01 19
Vernon's Ann. C. C. P., Art. 30.08 19
Vernon's Ann. C. C. P., Art. 31.03 19
Vernon's Ann. C. C. P., Art. 31.04 19
V. T. C. A., Bus. & C., Sec. 2.601 .....10, 13, 17
V. T. C. A., Bus. & C., Sec. 2.606 .....10, 13, 17
V. T. C. A., Bus. & C., Sec. 2.608 .....10, 13, 17
V. T. C. A., Bus. & C., Sec. 2.721 .....10, 13, 17
V. T. C. A., Bus. & C., Sec. 3.409 .....16, 17, 18, 20
V. T. C. A., Bus. & C., Sec. 3.417 .....16, 17, 18, 20
V. T. C. A., Bus. & C., Sec. 4.303 .....16, 17, 20
V. T. C. A., Bus. & C., Sec. 4.403 .....16, 17, 20
Vernon's Ann. Civ. St., Art. 275 17
Vernon's Ann. Civ. St., Art. 342-712 17
Vernon's Ann. Civ. St., Art. 3713, Rules 5 and 6 . 19
Vernon's Ann. Civ. St., Art. 3737(e) 19
Vernon's Ann. Civ. St., Art. 4076 17
Vernon's Ann. Civ. St., Art. 6840 17
Vernon's Ann. Rules Civ. Proc., Rule 185 19

OTHER AUTHORITIES:

Bierman, Fouraker, and Jaedieke, Quantitative Analysis for Business Decisions 20
Braucher and Southerland, Commercial Transactions 21
Executive Order No. 10925 21

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 197

ELIJAH W. RATCLIFF,

Movant

vs.

STATE OF TEXAS, Appellee, and WILLIAM J. ESTELLE, JR., Director, and D. H. COSTILOW, Warden,

Respondents

MOTION FOR LEAVE TO APPEAR

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

Movant, Elijah W. Ratcliff, respectfully moves the Court for leave to appear herein for the reasons appearing in the attached Motion and Petition.

(s) ELIJAH W. RATCLIFF
Movant
Elijah W. Ratcliff
Coffield Unit J-420
Tennessee Colony,
Texas 75861

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1973

ELIJAH W. RATCLIFF,

Movant

vs.

STATE OF TEXAS,

Respondent

MOTION FOR EXTENSION OF TIME TO FILE JURISDICTIONAL STATEMENT OR FOR LEAVE TO FILE PETITION FOR EXTRAORDINARY WRIT OF CERTIORARI

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

Movant, Elijah W. Ratcliff, respectfully moves the Court for an extension of time within which to file a jurisdictional statement or for leave to file a Petition for Extraordinary Writ of Certiorari from Ratcliff v. Texas, No. 47,600 in the Court of Criminal Appeals of Texas, for reasons of record before the Court and appearing hereinafter.

JURISDICTION

Jurisdiction of this motion arises out of Title 28 U.S.C. 1257(2) and (3) under Amendments to the U. S. Constitution, Articles V, VIII, XIII, XIV and XV. Jurisdiction also is vested by the All Writs Act, Title 28 U.S.C. Sec. 1651; *Parker v. Gladden*, 385 U.S. 363 (1966).

REASONS FOR GRANTING THE MOTION

Delaying Movant's efforts in complying with the filing deadline was produced by official state interference with Movant's preparation of his jurisdictional statement contrary to the Fifth and Fourteenth Amendments. The highest Court of Criminal Jurisdiction within the State refused to furnish Movant his appellate record for filing with the Supreme Court or to give any condition for furnishing same upon his request, timely made, and offer to pay the costs for such record. Each of the State Courts possessed with a duplicate or a portion of the applicable record similarly refused to furnish Movant any portion of his appellate record for review and filing with the Supreme Court of the United States upon his request for same as timely made and his offer to pay the Courts for such record. Title 42 U.S.C. 1981, 1982, and 1983.

The Diagnostic Unit, Texas Department of Corrections, wrongfully denied Movant an essential four (4) week period, all totaled, within which to communicate with an attorney making it indispensable that he initiate

review efforts pro se and without the resources of a conventional law office or the legal papers which it has confiscated even though such were essential to Movant's jurisdictional statement.

The attorney of record for Movant in the Texas Court of Criminal Appeals was coerced through State duress to represent Movant deficiently, such attorney having been appointed to a position on a State-supported law school faculty without the knowledge of Movant; and he refused even to communicate to Movant that the conviction had been affirmed so as to expedite execution of a timely supersedeas or appeal bond. *Street v. New York,* 394 U.S. 576 (1969).

The relief sought by Movant is warranted in the interest of justice to curtail the denial of his rights under the Fifth, Eighth, Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution, Title 42 U.S.C. 1981, 1982, 1983, and 1984. The complete record of the trial courts reflects that the conduct of Movant complained of does not approach criminality and the Courts', including the U. S. District Court's, actions contravened the Fifth Amendment and the Fourteenth Amendment by refusing to entertain the issues of systematic exclusion of peers from the Grand Jury, Movant being a Negro Citizen, and the capacity of Movant to secure a fair trial under the prevailing conditions of the material geographical location.

The undisputed, by evidence or testimony, lawful conduct of Movant raises a substantial question of the assessment of cruel and unusual punishment as well as the imposition of slavery and involuntary servitude by the

participating authorities contrary to the VIII and XIII Amendments to the U. S. Constitution, and an arbitrary suppression of his rights under the XV Amendment to the U. S. Constitution; Title 28 U.S.C. Secs. 1651 and 2241, *Faubus v. United States,* 358 U.S. 829 (1958).

Premises considered, Movant requests the Court to grant such leave and extension to file a jurisdictional statement or petition for extraordinary writ of certiorari pursuant to its inherent powers.

Witness my hand this 22nd day of May A.D., 1975.

ELIJAH W. RATCLIFF,
Movant, Pro Se

Petition for Extraordinary Writ
~~*Petition for Writ of Certiorari*~~

No.
IN THE SUPREME COURT
OF THE UNITED STATES
Term

ELIJAH W. RATCLIFF,
Appellant-Petitioner

vs.

STATE OF TEXAS, Appellee, and WILLIAM J. ESTELLE, JR., Director, Texas Department of Corrections, and Don Costilow, Warden, Coffield Unit, Texas Department of Corrections,
Respondents

PETITION FOR EXTRAORDINARY WRIT
OF CERTIORARI

No.
IN THE SUPREME COURT
OF THE UNITED STATES

October Term 197

ELIJAH W. RATCLIFF,
Petitioner-Appellant

vs.

STATE OF TEXAS,
Respondents-Appellees

WILLIAM J. ESTELLE, JR., Director of The Texas Department of Corrections and Don H. Costilow, Warden of Coffield Unit, Texas Department of Corrections,
Respondents

PETITION FOR EXTRAORDINARY WRIT
OF CERTIORARI

To the Honorable Warren E. Burger, Chief Justice, and the Justices of the Supreme Court of the United States:

OPINIONS BELOW

The Texas Court of Criminal Appeals, on the 23rd day of January, A.D., 1974, in Case No. 47,600, affirmed a conviction of Appellant, Elijah W. Ratcliff, arising out of the refusal to honor his check tendered in consideration of a motor vehicle held by a Livingston, Texas automobile dealer, which vehicle proved defective subsequent to delivery. The case is reported as *Ratcliff v. Texas*, 504 S.W. 2d 883 (1974). A motion for rehearing was denied in the proceeding under date of February 20, 1974 (see Appendix "A").

JURISDICTION

Jurisdiction of the Supreme Court of the United States is proper to be invoked herein pursuant to United States Code, Const. Art. 3, Section 2, Clause 1, in addition to United States Code, Const. Amends. V, VIII, XIII, XIV, and XV. Jurisdiction further expressly vested to review the decision of the Court of Criminal Appeals of Texas, the highest Court of criminal jurisdiction in the State where this proceeding was docketed as No. 47,600, by Title 28, United States Code, Section 1257(2) and (3) and Section 1447(d), which depended on the ultimate procedure made available for review. The appeal in the Court of Criminal Appeals of Texas was from an indictment in the District Court of Polk County, Texas, No. 9432, and a conviction upon a void indictment in the District Court of Montgomery County, Texas, No. 11,064, and a reversal is sought of its judgment affirming the conviction which was void for systematic exclusion of Appellant's peers, negro citizens, from the Grand Jury and for the denial of a fair and impartial trial by the District Court of Montgomery County, Texas, *Norris v. Alabama,* 294 U.S. 587 (1935).

The Courts possessing the record herein have refused to make the complete record or any portion of it available to Appellant except for his commitment papers necessitating relief pursuant to Title 28, United States Code, Section 1651(a) and (b), and the inherent jurisdiction of this Court to review and adjudicate the rights of citizens

of the United States under the Constitution. United States Code, Const. Art. 3, Section 2, Clause 1.

Notice of appeal was filed herein with the Clerk of the Court of Criminal Appeals of Texas, as well as each material State Trial Court, on the 6th day of May, A.D., 1974, formally designating an appeal as the procedure for review of the judgment of the Court of Criminal Appeals of Texas rendered on the 23rd day of January, A.D. 1974, and its order denying a rehearing filed on the 20th of February A.D., 1974, and the statutory authority for such relief is Title 28, United States Code, Section 1257(2), and Rule 10, Rules of the Supreme Court of the United States.

An extension of time for filing a petition for writ of certiorari was granted to July 20th, 1974 by Justice Lewis F. Powell of the Supreme Court, but such order did not provide the essentials of a mandamus to provide Appellant with the records of the State Court proceedings or with initiation of his communication privileges to make possible compliance with the filing deadline set, each of which factors was within the contemplation of Title 28, United States Code, Section 1651(a) and (b). *Haft v. West,* 335 F. 2d 481 (1964); *Price v. Johnston,* 334 U.S. 266 (1948).

The authority for the State's prosecution was not made of record prior to the appeal to the Court of Criminal Appeals of Texas, but it relied upon Vernon's Ann. P. C., Arts. 1410 and 1413. The statutes cited purported to define the offense of theft within the State, but it is obvious that its application to the lawful conduct of Appellant in refusing to pay for a 1966 Chevrolet pickup

truck, which he was not provided the opportunity to inspect prior to delivery, contravenes the requirements of due process ordered by the Fifth and Fourteenth Amendments. V.T.C.A., Bus. & C. 2.601, 2.606, 2.608 and 2.-721; United States Code, Const. Amends. V and XIV; Title 42, United States Code, Sections 1981, 1982, 1983, 1984, 1988, and 1994; *Palko v. Connecticut,* 302 U.S. 319 (1937); *Hesbrook v. State,* 194 S.W. 2d 260 (1946); *Beard v. State,* 287 S.W. 2d 667 (1956); *Giacona v. United States,* 358 U.S. 873 (1958).

QUESTIONS PRESENTED

I. The statutory authority expedited by the State of Texas is unconstitutionally vague and inconsistent under the Fifth and Fourteenth Amendments to the Federal Constitution as applied to Appellant.

II. The systematic exclusion of Appellant's peers, Negro citizens, from the Polk County, Texas Grand Jury resulted in a void indictment being returned against him.

III. The proceedings of the Trial Courts and the Court of Criminal Appeals of Texas reflect an unlawful conspiracy to convict Appellant.

IV. The proceedings of the Trial Court and the Court of Criminal Appeals of Texas were calculated to deprive Appellant of his due process guaranties under the Fifth and Fourteenth Amendments to the United States Constitution.

V. The refusal of the State of Texas and its official representatives to permit Appellant to complete and perfect a prompt review of the proceedings below contravenes the Fifth and Fourteenth Amendments' constitutional mandates.

VI. The denial by the State of Texas of a stay order to Appellant pending a timely review by the Supreme Court of the United States is violative of the dictates of the Fifth, Eighth, Thirteenth, Fourteenth, and Fifteenth Amendments to the Federal Constitution precluding cruel and unusual punishment.

VII. The continuous illegal restraint of one within the jurisdiction of the United States of America denies him due process and forces upon him precluded cruel and unusual punishment under the Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The pattern of conduct of the State of Texas, its agents and employees, serves to deny Petitioner the benefits of the Court's inherent authority to review litigation affecting its citizens. United States Code, Const. Art. 3, Section 2, Clause 1. It further is calculated to deny Petitioner due process and the equal protection of the law guaranteed to and vested in citizens by the Constitution as reflected by United States Code, Amends. V, VIII, XIII, XIV, and XV.

STATEMENT OF CASE

The evidence set forth at the trial below showed that on the 6th day of April, A.D., 1970, Appellant was in Polk County, Texas where he maintained a central location related to his legal services at P. O. Box 862, Livingston, Texas 77351. On the morning of the described date, he was operating a 1963 Ford pickup truck which had been turned over to him by his father, J. W. Ratcliff of Polk County, Texas, for miscellaneous use. The vehicle became incapacitated on this particular morning while Appellant was en route to Houston, Texas, near Goodrich, Texas, necessitating towing services of Polk County Motor Company and a search for a replacement vehicle by Appellant ultimately resulting in obtaining a 1966 Chevrolet pickup truck from Helton-Hodges Motor Company in Livingston, Texas, the consideration for the transfer being a check tendered by Appellant drawn on a solvent banking account in the amount of the purchase price.

The vehicle proved significantly defective following delivery to Appellant, without the opportunity for prior inspection, and he refused to permit the check to be paid in due course, electing to rescind the contract. V.T.C.A., Bus. & C. 2.601, 2.606, 2.608 and 2.721. However, upon returning to Livingston, Texas, it was discovered that J. W. Ratcliff had permitted a local motor vehicle trader to obtain the Ford vehicle for a nominal consideration in reliance upon the sufficiency of the Chevrolet vehicle.

When communication was engaged with Helton-Hodges Motor Company, it refused Appellant's offer of rescission and cooperation with Appellant in rescinding the transaction transferring the Ford vehicle, and its agent, Leonard Hodges of Polk County, Texas, insisted upon cash in the amount of the draft as tendered, which was not acceptable to Appellant. Seller's agent then proceeded to file a charge of theft against Appellant, and the subject indictment was returned against him by a racially discriminatory Grand Jury of Polk County, Texas (See Exhibit "B"). See Docket No. 74-5595; *Ratcliff v. Texas et al.*, Oct. Term, 1974); *Norris v. Alabama*, 294 U.S. 587 (1935); *Cobb v. Balkcom*, 339 F. 2d 95 (1964).

Appellant raised the issue of systematic exclusion of Negroes from the Polk County, Texas Grand Jury by a pre-trial petition and memorandum filed in No. 9432 in the District Court of Polk County, Texas, but his efforts to establish proof of systematic exclusion by specific interrogatories were stifled. Federal Rules Civ. Proc., Rule 33, 28 United States Code; *Gajewski v. United States*, 375 U.S. 968 (1963).

The unconstitutionality of the State's application of the Texas theft statute then in effect, Vernon's Ann. P. C., Arts. 1410 and 1413, as well as the issue of systematic exclusion were originally introduced by the described petition and memorandum related to a motion for dismissal while the proceeding was in the District Court of Polk County, Texas, No. 9432, and in the United States District Court for the Southern District of Texas, No. 71-H-228, and a subsequent motion to quash filed exclusively in the District Court of Polk County, Texas, No. 9432. Each

motion was filed prior to the transfer of the proceedings to the District Court of Montgomery County, Texas, No. 11,064, and each action and petition was refused by the trial courts during pre-trial litigation.

Venue in Polk County, Texas as well as in Montgomery County, Texas was excepted to at pre-trial proceedings through motions with affidavits of residents of the applicable Counties, but the indicated relief was refused. *Jackson v. United States*, 392 U.S. 932 (1968).

Motions for judgment and an instructed verdict were made during the trial after the State had rested, after the conclusion of all evidence, but the motions of Appellant were denied in each instance resulting in a six (6) years to serve sentence imposed on him in violation of his constitutional rights. Vernon's Ann. P. C., Arts. 1410 and 1413; *Hesbrook v. State*, 194 S.W. 2d 260 (1946); *Beard v. State*, 287 S.W. 2d 667 (1956); *Bouie v. City of Columbia*, 378 U.S. 347 (1964); Title 28, United States Code, Section 1652; United States Code, Const. Amend. XIV.

It is, also, material that Appellant submitted to the District Court of Montgomery County, Texas, No. 11,064, a detailed memorandum attached to and incorporated in a motion for new trial, after the Court had denied his motion for judgment and his objections to the charge to the jury, which charge disregarded the significance of the solvency of Appellant and his banking account in question as well as the fact that the vehicle was retained within the jurisdiction of the Court which returned the subject conviction. The charge further discounted the fact that seller was an experienced cardealer who was not misled and not

assumed by Appellant to have been misled by any representation of Appellant. The memorandum showed authorities establishing the irregularity of the conviction and punishment assessed in litigation which merited an exclusive civil remedy as well as other inconsistencies with due process not alleviated by the charge adopted by the trial Court. United States Code, Const. Amends. V, VIII, and XIV; Title 42, United States Code, Sections 1981, 1982, 1983, 1984, 1988 and 1994.

An appeal was perfected to the Court of Criminal Appeals of Texas wherein Appellant's Attorney of Record, Raymond Jordan of Houston, Texas, was coerced by State duress to file a deficient case in behalf of Appellant, but substantive matters of Appellant's case as presented to the trial Courts were before the appellate Court which affirmed the trial Court of Montgomery County, Texas, No. 11,064, in an opinion rendered on the 23rd day of January, A.D., 1974 (see Appendix A). *Ratcliff v. Texas,* 504 S.W. 2d 883 (1974). The opinion served to sanction the violations of Appellant's Fifth and Fourteenth Amendment rights of due process while totally ignoring that the Uniform Commercial Code, which authorizes the remedies elected by Appellant, was applicable to the transaction. Vernon's Ann. C.C.P., Art. 5.01; V.T.C.A., Bus. & C. 3.409, 3.417, 4.303 and 4.403; *United States v. Liguori,* 438 F. 2d 663 (1971); United States Code, Const. Amends. V and XIV; *American Federation of Labor v. American Sash and Door Company,* 335 U.S. 538 (1949).

GROUNDS SUBSTANTIATING FEDERAL QUESTIONS

Appellant was convicted and sentenced to a six (6) year sentence in the Texas Department of Corrections for exercising fully-lawful and well-established legal remedies in the State of Texas. All actions taken by and in behalf of Appellant resulting in a refusal to honor the check tendered by him to Helton-Hodges Motor Company on April 6, 1970, were pursuant to and prescribed by historical precedents. Vernon's Ann. C.C.P., Art. 5.01; Vernon's Ann. Civ. St., Arts. 275, 342-712, 4076 and 6840; V.T.C.A., Bus. & C. 3.409, 3.417, 4.303 and 4.403; *Hesbrook v. State,* 194 S.W. 2d 260 (1946); Title 28, United States Code, Sections 1443 and 1447(d); Title 42, United States Code, Sections 1981, 1982, and 1983.

Appellant's proposition for Seller to cooperate in reobtaining his Ford vehicle dispossessed in reliance on the sufficiency of the Chevrolet vehicle delivered by Helton-Hodges Motor Company was not improper. Appellant had a right to hold the vehicle during negotiations with Seller and deliberations with a third party who held the Ford vehicle. And the remedy was made additionally appropriate following the malicious act of Seller's agent, Leonard Hodges, in filing the charge of theft against Appellant. V.T.C.A., Bus. & C. 2.601, 2.606, 2.608, and 2.-721; Vernon's Ann. P.C., Arts. 1410 and 1413; Title 28, United States Code, Section 1343.

The evidence and the opinion on its face disclose that Appellant made no false pretext or fraudulent rep-

resentation to Seller, or anyone communicating with Seller, and it did not rely to its detriment on any representation made by Appellant as the tender of the draft did not purport to be an assignment of any particular funds or distinct obligations outside the contents and effect of the instrument. V.T.C.A., Bus. & C. 3.409 and 3.417.

The vagueness of the subject legislation as applied to Appellant is the primary error in the case, *Bouie v. City of Columbia,* 378 U.S. 347 (1964). However, it is rational to conclude that a grand jury with Negroes participating as citizens would have intuitively taken into account the sufficiency of the applicable banking account and the solvency of Buyer, Appellant, and absolved him from criminal liability. Therefore, the systematic exclusion of his peers as practiced denied him the essential element of a fair trial. Title 42, United States Code, Sections 1981, 1982, and 1983; United States Code, Const. Amends. V, XIV, and XV; *Atkins v. Texas,* 325 U.S. 398 (1945); *Hill v. Texas,* 316 U.S. 400 (1944). When a Federal right has been set up and claimed in a State Court, it becomes the duty of the Supreme Court to inquire not merely whether it was denied in express terms, but, also, whether it was denied in substance and effect. If this requires an examination of evidence, that examination of evidence "must be made". Otherwise, Supreme Court review would fail of its objective in safeguarding constitutional rights. Thus, whenever a State Court conclusion of law affecting a Federal right and finding of fact are so interwoven that the latter controls the former, it is incumbent on this Court to analyze the facts in order that the appropriate enforcement of the Federal right may be assured. *Norris v. Alabama,* 294 U.S. 587 (1935).

It is further speculated and presumed that a disinterested judiciary would have dismissed the charges of theft as insufficient upon inquiring about or otherwise discovering the seller's theory of theft—i.e. through a valid, bona fide bill of exchange without concealment or fraudulent removal of the purchased property from the jurisdiction of the participating Courts.

The refusal to transfer the case from the jurisdiction of the Polk County, Texas magistrates and jurists was an obvious product of an interested judiciary, additionally, as witnesses under oath testified to its adversity towards Appellant as a Negro citizen of Polk County, Texas. Such acknowledged adversity contributed to deprive Appellant of a fair trial under the Fourteenth Amendment within the contemplation of the Civil Rights Act. Vernon's Ann. C.C.P,. Art. 30.01, 30.08, 31.03 and 31.04; Title 42, United States Code, Section 1981; United States Code, Const. Amend. XIV.

Still further, a disinterested judiciary would not have attached any significance to the check payable to Angelina Chevrolet Cadillac Company admitted into evidence, no issue of intent being expressly raised, as the draft was tendered as a payment on a vehicle whose owner was liable to Appellant for an off-set in an amount exceeding substantially the amount of the draft (see Vernon's Ann. Texas Rules, Rule 185); but it would have entertained the significance of the deficiencies in the vehicle which Appellant submitted his tax records to establish at the trial. *Bledsoe v. Yarborough,* 412 S.W. 2d 222 (1967); *Hamilton v. Newburg,* 412 S.W. 2d 801 (1967); Vernon's Ann. Civ. St., Art. 3713, Rules 5 and 6; Vernon's Ann.,

Civ. St., Art. 3737(e); Title 42, United States Code, Sections 1981, 1982, and 1983.

It, conceivably, would have permitted a charge to the jury relevant to a solvent payor, which the instant trial court refused, and would have granted Appellant's motion to void the conviction and six (6) years to serve sentence after the trial, related and pursuant to United States Code, Const. Amends. VIII, XIII and XIV. It would, furthermore, not have had reason to influence an officer of the Court, Appellant's Attorney of Record, to proceed deficiently in the appeal. Title 28, United States Code, Sections 1443 and 1447(d); Title 42, United States Code, Sections 1981, 1982, and 1983; United States Code, Const. Amends. VIII, XIII, and XIV.

Due process requires that a criminal statute give fair warning of the conduct it prohibits, and the highest court of a State cannot circumvent the legislature and achieve such a result by judicial construction. *Hesbrook v. State,* 194 S.W. 2d 260 (1946); *Beard v. State,* 287 S.W. 2d 667 (1956); V.T.C.A., Bus. & C., 3.409, 3.417, 4.303 and 4.403; Title 42, United States Code, Section 1981; *Bouie v. City of Columbia,* 378 U.S. 347 (1964). "A law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process." *Baggett v. Bullitt,* 377 U.S. 360 (1964); *Fiaiuti v. Rosenberg,* 374 U.S. 449 (1963).

Scientifically documented precedent condones the line of reasoning adopted by Appellant (See *Bierman Fouraker and Jaedieke, Quantitative Analysis for Business Decisions,* Richard Irwin, Inc., Homewood, Illinois,

(1961), pp. 2, 10, 12, 20, 45-46, 57, 164 and 167). And it would have been totally unsound for Appellant to adopt the standard of conduct outlined by the Texas Judiciary (See *Executive Order* No. 10925, March 6, 1961). *Brown v. Board of Education of Topeka, Kansas,* 347 U.S. 483 (1954).

The refusal to favorably entertain Appellant's application for records essential to his appeal, or writ of certiorari, and further refusal to execute or permit communications essential to a review of the State Court proceedings infringes upon Appellant's Fifth and Fourteenth Amendments rights. United States Code, Const. Amends. V and XIV.

Application having been diligently sought (see Appendix "B"), it was an abuse of judicial discretion to deny the application in the absence of good cause. Title 28, United States Code, Sections 1443, and 1447(d); Title 42, United States Code, Section 1981; *Braucher and Southerland, Commercial Transaction* (3rd Ed.; Foundation Press, Brooklyn, 1964), p. 753.

The Diagnostic Unit, Texas Department of Corrections, wrongfully denied Appellant a crucial four (4) week period after he was notified of the determination of the Court of Criminal Appeals of Texas during his commitment processing, as his Attorney of Record for reasons attributable to duress failed to notify him of the decision, within which time to negotiate with an attorney to assist in presenting an appeal to this Court; and the Diagnostic Unit, Texas Department of Corrections, was infuriated by Appellant's selection to appeal the conviction to this Court resulting in their refusal to cooperate by allowing Appellant routine and standard communication

privileges, of a business nature, for the Department contrary to the spirit and letter of due process. United States Code, Const. Amends. V and XIV; *Norris v. Alabama,* 294 U.S. 587 (1935); *Alcoa Steamship Co. v. Perez,* 428 F. 2d 438 (1910).

The effectiveness of Appellant's efforts to obtain a timely review of the State Court proceedings would have been enhanced by the granting of a stay order and bond pending deliberations, in the Supreme Court of the United States, and the denial of such relief further encroached inherently upon his constitutional rights. United States Code, Const. Amend. VIII; *United States ex rel. Priest v. Department of Corrections of State of Delaware ex rel. Nandini,* 390 F. 2d 150 (1968).

All Bill of Rights guaranties incumbent upon States through the Fourteenth Amendment should be equally applied, even subject to regulation as if the judgment appealed from was received in a Court of the United States. United States Code, Const. Amend. V, VIII, XIII, XIV and XV; *Meyer v. Klinger,* 364 F. 2d 823 (1966); Title 28, United States Code, Section 2104.

Appellant is presently illegally confined in the Texas Department of Corrections of which William J. Estelle, Jr. of Huntsville, Texas, Respondent, is Director at its Coffield Unit in Tennessee Colony, Texas, of which Don H. Costilow, Respondent, of Tennessee Colony, Texas, is Warden. United States Code, Const. Amends. V, VIII, XIII, XIV, and XV; Title 42, United States Code, Section 1981.

Appellant concedes that, generally, habeas corpus cannot substitute for the process of an appeal, but the exceptions to such rule are abundantly applicable here as specific constitutional guaranties are violated in continuity by Appellee, State of Texas. *Downer v. Dunaway,* 53 F. 2d 586 (1931). The Appellee's deprivation of Appellant's right to a grand jury of his peers, a disinterested trial court and equal protection of his refusal to pay for a defective vehicle delivered to him without the opportunity for prior inspection and subject to the Uniform Commercial Code falls well within such exceptions.

The aim of the Thirteenth Amendment as implemented by Federal legislation is to end slavery and maintain a system of completely free and voluntary labor throughout the United States. United States Code, Const. Amend. XIII; Title 42, United States Code, Section 1984; *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409 (1968). The prime purpose in the abolition of involuntary servitude was to abolish all practices where by subjection some incidents of slavery were legally enforced, either directly, indirectly or insidiously. *United States v. Shackney,* 333 F. 2d 475 (1964); *Holt v. Sarver,* 442 F. 2d 304 (1971).

It is proper to make application for a writ of habeas corpus, after exhaustion of State remedies, directly to the United States Supreme Court, but futile exhaustion of State remedies is not necessary as exhaustion is a matter of comity and not jurisdictional. *Bruce v. Beto,* 396 F. 2d 212 (1968). Appellant, being victimized by fraud and conspiracy, is only required to set forth allegations and supporting facts which entitle him to relief. *Price v. Johnston,* 334 U.S. 266 (1948).

The prohibition against cruel and unusual punishment is a positive limitation on legislative and judicial ac-

tion, and habeas corpus is the popular remedy to effectuate the constitutional objectives. United States Code, Const. Amend. VIII; Title 28, United States Code, Sections 2241, 2242 and 2243; *Ralph v. Warden, Maryland Penitentiary,* 438 F. 2d 786 (1971); *Dearman v. Woodson,* 429 F. 2d 1288 (1970).

CONCLUSION

The Supreme Court has an overriding duty to exercise jurisdiction and void the conviction of Appellant obtained and sanctioned through the Texas judiciary. An appropriate order should be noted, forthwith, requiring Appellee and Respondents to show cause within the time contemplated by Rules 11 and 23, Rules of the Supreme Court of the United States, why Appellant is held in custody contrary to the precedents and authorities set forth herein, and upon such compliance or noncompliance to order Respondent, William J. Estelle, Jr., and Respondent Don H. Costilow to release Appellant from the described confinement *instanter,* flowing from the void character of his conviction in the District Court of Montgomery County, Texas. Title 28, United States Code, Sections 1443, 1447(d), 1651, 1652, 2241, 2242, and 2243; Title 42, United States Code, Section 1981; Rule 52, Rules of the Supreme Court of the United States.

As Title 28, United States Code, Section 2403, may be applicable, a copy of this instrument is being served on the Solicitor General of the United States, Department

of Justice, Washington, D.C. 20530, related to the constitutionality of the Civil Rights Act.

(s) ELIJAH W. RATCLIFF
Appellant, Pro Se
Coffield Unit J 420
Tennessee Colony,
Texas 75861.

APPENDIX A

CONVICTION AND COMMITMENT ORDERS, JUDGMENTS AND OPINION

Filed
Feb 25 1974
District Clerk,
Montgomery County, Texas
By Peggy Stevens, Deputy

No. 47,600

ELIJAH W. RATCLIFF,

Appellant

v.

THE STATE OF TEXAS,

Appellee

Appeal From Montgomery County

OPINION

Appellant was indicted for the offense of felony theft as defined in Art. 1410, V.A.P.C., and the jury found him guilty and fixed his punishment at confine-

ment for six years. The trial was held in Montgomery County after the Court ordered a change of venue from Polk County on its own motion following appellant's application for a change of venue.

On April 6, 1970, appellant appeared at an automobile dealer's place of business in Livingston and there negotiated with one of the partners for the purchase of a 1966 Chevrolet pickup truck. The parties agreed upon a price of $895 plus taxes and transfer charges, the total price being $923.60. Appellant then wrote a check for the full amount of the price of the vehicle payable to the dealer, and received the certificate of title and license receipts for the truck. He then drove away in the truck.

However, before completing the transaction, the dealer had his bookkeeper telephone the bank upon which the check was drawn, Chase Manhattan Bank in New York City, to determine if appellant's check was covered by funds then on deposit in the bank and would be honored on presentation. Upon being assured that funds were on deposit sufficient to cover the check, the dealer completed the transaction.

The seller deposited the check in the bank for collection in accordance with usual banking practices, but it was returned to him by his local bank within a short time thereafter with the notation that payment thereon had been stopped by the maker. The dealer made several unsuccessful attempts to secure the money or the truck from the appellant, but no civil proceedings resulted from the transaction.

Appellant testified that he had never paid the dealer anything for the truck, that he still had it and the certifi-

cate of title in his possession. As we read the testimony, he attempted to defend the charges by offering his own testimony that the truck was defective in several respects and was not worth the price agreed upon.

Appellant offered in evidence his copies of the bank records of the New York bank upon which the check was drawn and such records established that he actually had on deposit in said bank, for a substantial period before and after the date of the check, funds sufficient to cover the face of the check which he had given in payment of the truck.

Appellant presents grounds one and three together in his argument and we will consider them jointly. Ground one contends that the evidence is insufficient to sustain the conviction and, by ground three, he contends that the trial court erred in overruling his motion for an instructed verdict.

Neither party cites nor refers us to a case precisely in point upon the question now under review. Appellant's cases refer to theft by false pretext by the giving of a worthless check in payment of mechandise. E.g., Dinsmore v. State, 169 Tex. Crim. 504, 335 S.W. 2d 612 (1960). Others relate to the offense of swindling. E.g., Jones v. State, 123 Tex. Crim. 437, 59 S.W. 2d 418 (1933). None are found to be apposite.

The State's brief, although elaborate and lengthy, likewise fails to present either case or statutory authority controlling the disposition of the grounds of error now under review.

The indictment charged theft as defined in Art. 1410, V.A.P.C., reading:

> " 'Theft' is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking."

The charge, which followed the pattern found in 5 Branch's Ann. P.C. (2d ed. 1956) §2683.1 at 131, submitted theft by false pretext as defined in Art. 1413, V.A.P.C. The latter part of Art. 1413 reads: "[I]f the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete."

It is now well-settled that a conviction of theft by false pretext can be had upon an indictment in ordinary form charging felony theft as defined in Art. 1410, V.A.P.C. Anders v. State, 171 Tex. Crim. 344, 350 S.W. 2d 549 (1961), and authorities therein cited. And, as said in 5 Branch's, supra, §2681, p. 127:

> "The offense of theft is cŏmplete under this article [1413] when the owner of property capable of being stolen surrenders possession of it to one who had the fraudulent intent to appropriate it and did appropriate it to his own use, and the owner's consent to such fraudulent taking does not prevent the conviction of theft."

It was incumbent upon the State, to sustain a conviction of theft by false pretext, to prove beyond a

reasonable doubt that appellant obtained possession of the pickup truck: (a) through some pretext; (b) that the pretext was false; (c) that there existed an intent on the part of appellant to appropriate the truck at the time he obtained possession thereof; and (d) he did so appropriate it to his own benefit. Williams v. State, 152 Tex. Crim. 233, 211 S.W. 2d 951, 952 (1948). Moreover, the State had the further burden of proving there was a reliance upon the false pretext. Womack v. State, 408 S.W. 2d 119, 121 (Tex. Cr. App. 1967). See also, Colaluca v. State, 494 S.W. 2d 885, 886 (Tex. Cr. App. 1973).

Appellant's argument that the evidence is insufficient to support the conviction is stated in this manner:

> "[T]he issue is whether the defendant promised not to stop payment on the check and such promise was a false one. We submit that no such proof beyond a reasonable doubt was presented in the instant case. There was no proof of any verbal acts on [the] part of the defendant; no proof of a promise. And if an inference is to be made that there was a promise, there is no proof that the promise was false."

Regrettably, appellant refrains from citation of authority supporting the contention so advanced.

The general rule is announced in Dixon v. State, 152 Tex. Crim. 504, 215 S.W. 2d 181, 182 (1948):

> "Verbal assertions or direct representation are not required to show a false pretense or representation. Such may be shown by the conduct and acts of the party." (Citations omitted.)

Accord: Westover v. State, 167 Tex. Crim. 589, 322 S.W. 2d 279, 280 (1959); Luster v. State, 172 Tex. Crim. 319, 356 S.W. 2d 934, 935 (1962); Hogan v. State, 393 S.W. 2d 898, 901 (Tex. Cr. App. 1965).

In his own testimony, appellant admitted obtaining title to and possession of the truck, his issuance of the check in payment therefor, that he requested the drawee bank to stop payment thereon, his refusal to return the truck or to release the stop payment order on the check, his refusal to pay the face of the check in cash, his present possession of the truck, and the fact that he had not paid (in money or other thing of value) anything therefor.

We also note that although appellant testified in detail as to the transaction, at no time did he ever deny his intent to procure title and possession of the vehicle through the issuance of the check and then stopping payment thereon. Giving due consideration to all of the facts enumerated above, we find the evidence sufficient to sustain the conviction and grounds one and three are overruled. Dixon v. State, supra, and authorities following it.

We are strengthened in this conclusion when we take into consideration the fact that appellant had acquired possession of another vehicle from another dealer through the same stratagem, a matter to which we now turn.

Appellant's second ground of error complains of the admission of evidence of a similar crime. Upon cross-examination, appellant was asked:

"Q. Did you ever buy another vehicle from any other person and stop payment on the check that you gave in payment for it?

"A. No.

"Q. You may not have understood my question. I'll rephrase it. Did you buy a vehicle from Mr. Hunter in Lufkin and give him a check for the vehicle and then stop payment on that check?

"A. No."

After appellant rested his case, the State called R. A. Hunter, an automobile dealer from Lufkin, and established that in April, 1971 (a year after the transaction here involved), he sold a 1972 Vega to appellant, receiving his check drawn upon a Chicago bank in the amount of $500 in part payment therefor. This check was returned shortly after it was deposited with the notation "Payment Stopped" ; that he was unable to locate either appellant or the vehicle for a long time thereafter; and, when finally found, the vehicle had been wrecked and that appellant had never paid him therefor.

The State offered this testimony for the limited purpose of showing intent at the time appellant obtained possession of the truck involved in this case. The Court so advised the jury at the time of its admission and covered the matter in detail in the charge.

Appellant's objection to the receipt of the testimony was expressed in this manner: "Objection to that. It's too remote. It's irrelevant. No predicate has been laid to establish the relevancy of it."

Appellant cites only Jones v. State, as authority; but there is no volume listed for the particular "Jones" case

which he has in mind and we are not disposed to read the hundreds of Jones cases listed in Volume 40 of the Texas Digest table of cases which bear the same title in an effort to locate the one cited.

Our record discloses that the trial court had before him at the time the testimony was admitted the opinion in O'Brien v. State, 376 S.W. 2d 833, 836 (Tex. Crim. App. 1964). There, quoting from an earlier case, the Court said:

" 'When an extraneous crime, or other transaction, tends to show intent when intent is in issue, proof of same is admissible.' "

In 1 Branch's Ann. P.C. (2d ed 1956) §188, p. 200, many cases are cited supporting the rule stated above. The rule so enunciated is still valid. See, e.g., Blankenship v. State, 448 S.W. 2d 476, 480 (Tex. Cr. App. 1969).

Indeed, it appears that the testimony was admissible for still another reason: it controverted the defensive theory of lack of intent which found support only in his own testimony. Cf. Frison v. State, 473 S.W. 2d 479, 483 (Tex. Cr. App. 1971). Ground two is overruled.

In his fourth ground of error, appellant contends that the trial court erred in refusing one of his requested charges, reproduced in the margin.[1] The only authority

---

[1] "If you find that sufficient funds were in the account of the applicable Bank to pay the amount of the check tendered to Helton-Hodges Motor Company, and that the defective condition of the vehicle delivered to Defendant as consideration justified a request that payment of the check be stopped, then you must find the Defendant not guilty."

cited is Goldman v. State, 468 S.W. 2d 381 (Tex. Cr. App. 1971), enunciating the well-established rule that an accused is entitled to an affirmative instruction on every defensive issue raised by the evidence, even though such issue is raised by his testimony alone. We readily acknowledge the rule so announced, but do not find it to be applicable.

The charge found in our record, to which appellant made no objection, is substantially the same charge found in 8 Texas Practice, Criminal Forms (Morrison and Blackwell, 7th ed.) §3559, p. 564. In Dennis v. State, 420 S.W. 2d 940, 942 (Tex. Cr. App. 1967), the Court said:

> "The charge as given in this case is substantially in the same terms as the charge which is recommended in Willson's Criminal Forms, Seventh Edition, Section 3559. Without further authority we would not be inclined to require the giving of additional charges for the jury's guidance."

See also, Colaluca v. State, supra (494 S.W. 2d at 887).

Judge Onion, speaking for the Court in Parks v. State, 437 S.W. 2d 554, 557 (Tex. Crim. App. 1969), cited two key numbers to Texas Digest, along with two cases supporting this statement:

> "Further, it is well established that special requested charges may be properly refused where the instructions given by the court are adequate and fully protect the rights of the accused."

Moreover, appellant does not refer us to any authority supporting his major premise, that an uncommunicated

unilateral subjective determination by an accused as to the value of property received in exchange for a check is a defense to theft by false pretext. We find no error in the refusal of the requested charge and ground four is overruled.

The judgment in the case at bar orders confinement in the state penitentiary for not less than two nor more than six years. This appears to be an improper application of Art. 42.09, V.A.C.C.P., (the indeterminate sentence law) to the judgment rather than the sentence. The judgment will be reformed to comply with the jury's verdict assessing a definite penalty of six years confinement in the Texas Department of Corrections. Bradley v. State, 450 S.W. 2d 847, 854 (Tex. Crim. App. 1969).

As reformed, the judgment is affirmed.

Quentin Keith,
Commissioner

(Delivered January 23, 1974)

Opinion approved by the Court

A True Copy
Attest:
Glenn Haynes, Clerk
Court of Criminal Appeals of Texas
By: Tommy [Illegible]
Deputy

Trial Court No. 11,064

FILED

Feb 25 1974

R. J. Gray
District Clerk, Montgomery County, Texas
By Peggy Stevens, Deputy

The State of Texas,

To the 9th Judicial District Court of Montgomery County—Greeting:

Before our COURT OF CRIMINAL APPEALS, on the 20th day of February A.D. 1974, the cause upon appeal to revise or reverse your Judgment between ELIJAH W. RATCLIFF Appellant, No. 47,600

vs.

The State of Texas, Appellee, was determined; and therein our said COURT OF CRIMINAL APPEALS made its order in these words:

> "This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, but that there was error in pronouncing judgment upon the appellant, the judgment is reformed,
>
> "TO COMPLY WITH THE JURY'S VERDICT ASSESSING A DEFINITE PENALTY OF SIX YEARS CONFINEMENT IN THE TEXAS DEPARTMENT OF CORRECTIONS"

> It is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

LEAVE TO FILE APPELLANT'S MOTION FOR REHEARING IS DENIED

WHEREFORE, We command you to observe the order of our said COURT OF CRIMINAL APPEALS in this behalf and in all things to have it duly recognized, obeyed and executed.

WITNESS, the HON. JOHN F. ONION, JR., Presiding Judge of our said COURT OF CRIMINAL APPEALS, with the Seal thereof annexed, at the City of Austin, this 22ND day of FEBRUARY A.D. 1974.

GLENN HAYNES
Clerk.
Troy Bennett
Deputy Clerk

Ent: Vol 7, Page 492

IN THE DISTRICT COURT OF MONTGOMERY COUNTY, TEXAS

No. 11064
October 10, 1972

THE STATE OF TEXAS
vs.
ELIJAH W. RATCLIFF

This day this cause being again called, the State appeared by her District Attorney, and the defendant Elijah W. Ratcliff, was brought into open Court in person, in charge of the Sheriff, for the purpose of having the sentence of the law pronounced in accordance with the* verdict and judgment herein rendered and entered against him on a former day of this term. And thereupon the defendant Elijah W. Ratcliff was asked by the Court whether he had anything to say why said sentence should not be pronounced against him and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of the said defendant Elijah W. Ratcliff to pronounce sentence against him as follows:

It is the order of the Court that the defendant Elijah W. Ratcliff who has been adjudged to be guilty of Theft and whose punishment has been assessed by the* verdict

* Insert the words applying:
Verdict of the Jury
or
Judgment of the Court

of the jury at confinement in the penitentiary for Six (6) years, be delivered by the Sheriff of Montgomery County, Texas, immediately to the Director of Corrections of the Texas Department of Corrections, or other person legally authorized to receive such convicts, and the said Elijah W. Ratcliff shall be confined in said penitentiary for a term of not less than Two (2) years nor more than Six (6) years in accordance with the provisions of the law governing the penitentiaries and the Texas Department of Corrections. And the said Elijah W. Ratcliff is hereby remanded to jail until said Sheriff can obey the directions of this sentence.

J. S. Holleman
Judge Presiding

Judgment of Conviction—Not Guilty

BE IT REMEMBERED, That on Monday, the 17th day of July 1972, there came on and was held a regular term of the Honorable District Court of Montgomery County, Texas, at the Court House thereof, at Conroe, Texas.

Present and presiding: Hon. J. S. Holleman Judge, Criminal District Court of Montgomery County; Ellis A. Qualline, Jr., District Attorney; R. J. Gray, District Clerk, and A. E. Reaves, Sheriff.

Appendix A

No. 11064
July 26th, 1972
Indicted for THEFT

THE STATE OF TEXAS

vs.

ELIJAH W. RATCLIFF

THIS DAY this cause was called for trial, and the State appeared by her District Attorney, and the Defendant Elijah W. Ratcliff appeared in person and by Counsel, and both parties announced ready for trial; and the Defendant in open Court pleaded not guilty to the charge contained in the Indictment herein; and thereupon a jury, to-wit:

Fred E. Wilson and eleven others, was duly selected, empaneled and sworn, according to law, who, having heard the indictment read, and the defendant's plea of not guilty thereto; and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer, the Defendant being present, and in due form of law returned into open Court the following verdict, which was received by the Court, and is here now entered upon the minutes of this Court, to-wit:

"We the jury find the defendant Elijah W. Ratcliff guilty as charged.

/s/ Fred E. Wilson, Foreman"

Appendix A

It is, therefore, considered and adjudged by the Court that the Defendant Elijah W. Ratcliff is guilty of the offense of Theft as found by the jury, and that he be punished, as has been determined, by confinement in the State penitentiary for a term of Six (6) years, and that the State of Texas do have and recover of said Defendant Elijah W. Ratcliff all costs in the prosecution expended, for which execution will issue, and that said Defendant be remanded to jail to await the further order of this Court herein.

APPENDIX B

NOTICES OF FURTHER APPELLATE PROCEEDINGS

IN THE COURT OF CRIMINAL APPEALS

No.

Elijah W. Ratcliff,
Appellant

vs.

State of Texas,
Appellee

NOTICE OF REVIEW AND APPLICATION FOR STAY

To the State of Texas and the Attorney General of Texas:

Elijah W. Ratcliff, Appellant, hereinafter referred to as Petitioner, hereby gives notice to the State of Texas, Appellee, hereinafter referred to as Respondent, that he intends to seek and is seeking a review of the judgment of this Court rendered on the 23rd day of January, A.D.,

1974, wherein this Court affirmed a conviction of Petitioner in the District Court of Montgomery County, Texas, and Ninth Judicial District, No. 11,064, on a charge of theft arising out of Petitioner's refusal to pay a complainant for a 1966 Chevrolet Pick-up Truck discovered to be defective by Petitioner to delivery of it.

AUTHORITIES

This review is based on Title 28, U.S. Code, Sec. 2102 and 2104 and Rules 10 and 11, Rules of the Supreme Court of the United States, and Petitioner requests a review of the complete judgment of the Texas Court of Criminal Appeals herein as well as the judgments in the Trial Courts, No. 9432 Ninth Judicial District, Polk County, Texas; the removal proceedings in the United States District Court for the Southern District of Texas pursuant to Title 28, U.S. Code Sections 1443 and 1447(d), as well as Title 42 U.S. Code Sections 1981, 1982, 1983, and 1988, and the trial and review proceedings in the District Court of Montgomery County, Texas, 2nd Ninth Judicial District, No. 11,064, from which this Appeal directly derived. This review is further based on Rules 18, 19, 21, 22, and 23 of the Rules of the Supreme Court of the United States, and miscellaneous provisions of the Uniform Commercial Code, as adopted in Texas, and the applicable unaffected previously existing commercial laws on negotiable instruments. Article 342-712, Vernon's Annotated Texas Statutes.

Appendix B

STAY APPLICATION

Petitioner further requests the Court to enter a stay order this day, forthwith, withdrawing its mandate herein and ordering the release of Petitioner from the custody of warden J. O. Walker of the Wynne Unit, Texas Department of Corrections and other employees and agents of the State of Texas during the residency and prosecution of the aforementioned and described review before the Supreme Court of the United States.

Witness my hand this 23rd day of March, A.D., 1974.

(s) Elijah W. Ratcliff,
Petitioner

CERTIFICATE OF SERVICE

I, Elijah W. Ratcliff, Petitioner in the foregoing notice of review and Application for Stay, hereby certify that a copy of such instrument was served this day on the Attorney General of Texas by first class United States mail at Austin, Texas from Huntsville, Texas.
Dated: March 23, 1974

(s) Elijah W. Ratcliff,
Petitioner

Appendix B

IN THE COURT OF CRIMINAL APPEALS
STATE OF TEXAS
AUSTIN, TEXAS

No. 47,600

Elijah W. Ratcliff,
Petitioner

vs.

State of Texas,
Respondent

SUPPLEMENT TO NOTICE OF REVIEW

To the Said Honorable Court:

Petitioner, Elijah W. Ratcliff hereby emphasizes to the Court the immediate necessity of a record of the proceedings relevant to and in the above entitled and numbered Appeal which Petitioner deserves to have reviewed by the Supreme Court of the United States as jurisdiction is provided for by Title 28, U.S. Code, Section 1257(2) and (3).

I

That such record is relevant to the preliminary as well as substantive issues which the Court is being requested to review, and time is now a critical factor in obtaining such review.

II

That Petitioner hereby reiterates his request that he be forthwith notified of any amount or amounts due or payable prerequisite to obtaining the relevant record whether attributable to past services or future expenses.

Witness my hand this 9th day of April, A.D., 1974.

Elijah W. Ratcliff,
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I, Elijah W. Ratcliff, do certify that a copy of the foregoing Supplement to Notice of Review was served this day by first class United States mail on the clerk of the Supreme Court of the United States in Washington, D.C. and the Attorney General of Texas at Austin, Texas.
Dated: April 9, 1974

Elijah W. Ratcliff,
Petitioner, Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

No.

Elijah W. Ratcliff,
Appellant

vs.

State of Texas,
Appellee

NOTICE OF APPEAL

To: Glenn Haynes, Clerk, Court of Criminal Appeals of Texas: Howard Jones, Clerk, Ninth Judicial District, Polk County, Texas: and R. J. Gray, Clerk, 2nd Ninth Judicial District, Montgomery County, Texas.

Whereas Appellant submitted notice of his intention to seek a review of a criminal case to the clerk of the Court of Criminal Appeals of Texas in No. 47,600 from Montgomery County, Texas, No. 11,064, and Polk County, Texas, No. 9432, and notification of Certification of the record had not been received by him, notice is hereby given to the Courts which may presently possess such records of his intitiation of an appeal from the judgment and denial of rehearing in No. 47,000 before the Court of Criminal Appeals of Texas originally rendered on the 23rd day of January, A.D., 1974.

JURISDICTION of this Appeal is by virtue of Title 28 U.S.C. 1257, and the Eighth, and Fourteenth Amendments to the United States Constitution, U.S.C., Const., Amend., 8, 14, and the procedures set forth by Title 28, U.S.C., 2101, 2102, 2104, and 2105.

Jurisdiction is further supported by the Civil Rights Act, as amended, as more fully appears in the jurisdictional statement and application for Extraordinary Writs previously submitted herein. Title 28, U.S.C. 1447(d); Title 42 U.S.C. 1981 1982, and 1983.

THE RECORD requested to be certified for filing herein by the Clerk of the Court which presently possess it, fully or partically, consistent with Rule 12, Rules of the Supreme Court of the United States, is as follows:

1. The complete record as presented to the Court of Criminal Appeals in No. 47,600.

2. Specific request is made of the Clerk of the District Court of Montgomery County, Texas for the Motion To Dismiss, Motion for Change of Venue With Affidavits, the verbatim transcription of a testimony and evidence recorded before the Court, including all objections of Appellant in Chambers as well as in open court and all exhibits of evidence and bills presented by Appellant before the trial court; including his tax records for auto expenditures.

3. Specific request is made of the Clerk of the District Court of Polk County, Texas for the Petition for Removal with attachments, memorandum in support jurisdiction, interrogatories served on agents of the State of Texas, Order remanding in No. 71-H-228

in the U. S. District Court at Houston, Texas, Motion To Dismiss, and the Motion for Change of Venue With Affidavits, each submitted before the Trial and transfer of the proceedings in No. 9432, Ninth Judicial District, Polk County, Texas, to Montgomery County, Texas.

4. Specific request is also made of the District Clerk, Montgomery County, Texas for motions and authorities submitted following the trial at the stage for motions for new trial and in arrest of judgment as well as any authorities presented preliminary to the Appeal to the Court of Criminal Appeals at Austin, Texas.

Witness my hand this 6th day of May, A.D., 1974 to the foregoing notice of Appeal, copies of which were served this day on each of the Clerks referred to herein and the Attorney General of Texas by first class United States mail.

Elijah W. Ratcliff
Appellant, Prose

Sworn to and Subscribed Before Me this —th day of May, A.D., 1974.

APPENDIX C

TEXT OF AUTHORITIES INVOLVED AND RELIED ON

Vernon's Ann. Civ. Art. St. 275:

The judges and clerks of the district and County Courts and Justices of the Peace may issue writs of original attachment, returnable to their respective courts, upon the Plaintiff, his agent or attorney making an affidavit stating:

that the defendant is justly indebted to the Plaintiff, and the amount of the dearant; and

that the debt is due for property obtained under false pretenses. Acts 1864, Page 37; G. L. vol. 5, p. 691.

Vernon's Ann. Civ. St. Art 3737 (e):

Section 1. A memorandum or record of an act, event or condition shall, insofar as relevant, be competent evidence of the occurence of the act or event or the existence of the condition if the judge finds that:

a. It was made in the regular course of business;

b. It was the regular course of that business for an employee or representative of such business

with personal knowledge of such act, event, or condition to make such memorandum or record or to transmit information thereof to be included in such memorandum or record;

c. That it was made at or near the time of the act, event or condition or reasonably soon thereafter. Sec. 4. "Business as used in this act includes any and every kind of regular organized activity whether conducted for profit, or not. Acts 1951, 52nd Leg., p. 345, Ch. 321."

Vernon's Ann. Civ. St. Art. 4076:

The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.

2. Where the Plaintiff sues for a debt and makes affidavit that such debt is just, due, unpaid, and that the defendant has not within his knowledge property in his possession within this state, subject to execution, sufficient to satisfy such debt; and that the garnishment applied for is not sued or out to injure the defendant or the garnishee.

3. Where the Plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment. Acts 1874, P. 113; P.D. 157-3785; G. L. Vol. 8, P. 115.

Vernon's Ann. Civ. St. Art. 6840:

Judges and Clerks of the district and county courts, and justices of the peace shall, at the commencement or during the progress at any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts; in the following cases:

When a person sues for title or possession of any personal property or any person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

When a person sues for foreclosure of a mortgage or the enforcement of lien upon personal property or of any description; and makes oath that he fears that the defendant or person in possession thereof will justly injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit.

When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

Acts 1866, P. 120; Acts 1887, P. 30 G.L. Vol. 5, Page 1038; Vol. 9, P. 828.
V.T.C.A., Bus. & C. §4.403:

(a) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4.303.

(b) An order is binding upon the bank only if it is in writing, dated, signed, and describes the item with

certainty. An order is effective for only six months unless renewed in writing.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. (59th Leg's. Ch. 721, Sec. 4-403.) Acts 1967, 60th Leg., Vol. 2, P. 2343, Ch. 785, §1.

Notes of Decisions 10, Malphrus v. Home Savings Bank of City of Albany, 254 N.Y.S. 2d 980 (1965).

Affidavit

AFFIDAVIT OF SERVICE

State of Texas,
County of Anderson

I, Elijah W. Ratcliff, Movant in the foregoing Motion for Extension of Time To File Jurisdictional Statement or for Leave To File Petition for Extraordinary Writ of Certiorari and Petition for Extraordinary Writ of Certiorari, with Motion for Leave, do solemnly assert that a copy of such instrument was served this —— day of April, A.D., 1975, on the Hon. John Hill, Attorney General of Texas, Supreme Court Building, Austin, Texas 78711, Hon. Don Costilow, Warden, Coffield Unit, Texas Department of Corrections, Tennessee Colony, Texas 75861, and Hon. William J. Estelle, Jr., Director, Texas Department of Corrections, Huntsville, Texas 77340, by first class United States mail through the procedure of depositing same sealed and properly addressed in the mail facilities of Coffield Unit, Texas Department of Corrections, Tennessee Colony, Texas 75861.

Witness my hand this —— day of April A.D., 1975.

Affiant

Sworn to and subscribed before me this —— day of April A.D., 1975.

Notary Public
Anderson County, Texas